

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JON R. GILLIS,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

Case No. C20-739RSM

ORDER TO SHOW CAUSE

This matter comes before the Court *sua sponte*. On December 20, 2019, Jon R. Gillis filed a “Request for Arbitration” with the Washington State Office of the Attorney General Lemon Law Administration. Dkt. #1 at 7. Mr. Gillis alleged there was a serious safety defect with his recently purchased BMW motorcycle. Mr. Gillis prevailed in arbitration and was awarded \$32,223.33 plus \$17,400.00 in attorney’s fees. *Id.* at 57. On April 16, 2020, BMW of North America, LLC (“BMW”) filed a “Petition of Appeal from Arbitration Decision and Request for Trial De Novo” in King County Superior Court, citing RCW 19.118.090(9). *Id.* at 22. Even though BMW was the party filing the action and petitioning for relief, BMW listed itself as “Defendant” and Mr. Gillis as “Plaintiff.” *Id.*

BMW removed its own state court action to this Court on May 15, 2020. *See id.* In its Notice of Removal, BMW states that this Court has diversity jurisdiction and that the amount in controversy exceeds \$75,000. *Id.* at 1. BMW asserts:

...plaintiff has demanded the following damages and other relief:

A. Written Demands for Payment: Plaintiff twice demanded in writing that BMW NA pay sums totaling \$425,000 to plaintiff.

B. Plaintiff's Draft Complaint: In his draft Complaint, plaintiff asserts 15 separate causes of action against BMW NA including... claims for civil conspiracy... negligent misrepresentation, conversion, unjust enrichment.... Based on the allegations contained in plaintiff's draft Complaint and consistent with Washington law, the damages sought by plaintiff easily exceed \$75,000.

*Id.* at 2.

On May 17, 2020, Mr. Gillis, figuring himself the Plaintiff in this case, filed a "Notice of Voluntary Dismissal." Dkt. #2.

On May 18, 2020, BMW filed an Answer with counterclaims. Dkt. #3. BMW is counterclaiming for breach of contract, negligence, and civil conspiracy against Mr. Gillis. *Id.* BMW makes a point of alleging that its counterclaims are for damages "anticipated to exceed \$75,000." *See, e.g., id.* at 7.

An action may be removed to federal court only if it could have been originally brought in federal court, and only by the defendant. 28 U.S.C. § 1441(a). "The defendant bears the burden of establishing that removal is proper." *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). Any doubt as to the right of removal is resolved in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). This Court must *sua sponte* review all removed actions to confirm that federal jurisdiction is proper. *Sparta Surgical Corp. v. Nat'l Ass'n. Sec. Dealers, Inc.*, 159 F.3d 1209, 1211 (9th Cir. 1998)

1 (“If a district court lacks subject matter jurisdiction over a removed action, it has the duty to  
2 remand it . . .”). A court may raise the question of subject matter jurisdiction *sua sponte* at any  
3 time. *Snell v. Cleveland, Inc.*, 316 F. 3d 822, 826 (9th Cir. 2002); Fed. R. Civ. P. 12(h)(3).

4 In considering the amount in controversy, the Court first looks to the face of the  
5 complaint. *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). Where it is  
6 unclear or ambiguous from the face of the complaint whether the requisite amount in  
7 controversy is plead, the removing defendant bears the burden of establishing, by a  
8 preponderance of the evidence, that the amount in controversy exceeds the jurisdictional  
9 amount. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013). The  
10 Ninth Circuit has stated that the amount in controversy is “not a prospective assessment of [a]  
11 defendant’s liability,” but “the amount at stake in the underlying litigation.” *Chavez v.*  
12 *JPMorgan Chase & Co.*, 888 F.3d 413, 417 (2018) (internal citations omitted).

15 The Court has reviewed the record in this case and finds many apparent procedural  
16 errors made by the parties. The Court’s primary concern is whether it has subject matter  
17 jurisdiction. The only basis for removal is diversity, and the amount in controversy, judging by  
18 the amount at stake in the underlying litigation, appears to be capped at \$32,223.33 plus  
19 \$17,400.00 in attorney’s fees. The “complaint” in this case, if one can be found, is BMW’s  
20 Petition of Appeal from Arbitration Decision and Request for Trial De Novo. Examining that  
21 document, BMW is seeking only to overturn the arbitration decision and avoid paying the above  
22 award, which is less than \$75,000. Mr. Gillis is not seeking to overturn the arbitration decision.  
23 He is not currently pursuing any claims against BMW in the state court action. BMW’s  
24 estimation of the claims Mr. Gillis sought or seeks out of court are irrelevant for calculating the  
25 amount in controversy in the underlying litigation. BMW’s post-removal counterclaims are  
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1 likewise irrelevant. Given all of the above, this Court almost certainly lacks subject matter  
2 jurisdiction over this case and remand is appropriate.

3 In Response to this Order, BMW must file a Response telling the Court 1) why it is able  
4 to remove this case when it acted as a plaintiff or petitioner in the state court action, and 2) why  
5 the amount in controversy requirement has been met given that the dispute in the underlying  
6 state court action is over an arbitration award less than \$75,000. This Response may not exceed  
7 **six (6) pages**. The Court will take no further action in this case until BMW has submitted this  
8 Response.  
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10 Accordingly, the Court hereby finds and ORDERS that BMW shall file a Response to  
11 this Order to Show Cause containing the detail above no later than **twenty-one (21) days** from  
12 the date of this Order. Failure to file this Response will result in an order of remand.  
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15 DATED this 19<sup>th</sup> day of May, 2020.  
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19 RICARDO S. MARTINEZ  
20 CHIEF UNITED STATES DISTRICT JUDGE  
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